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Supreme Court, U.S.
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NO. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

ROBERTO A. RAMIREZ, STACIA RAMIREZ, STEPHANIE RAMIREZ and BOBBY RAMIREZ,
(Petitioners)

v

CITY OF WICHITA; OFFICER McCULLOUGH, Badge No. 1467; OFFICER BARNS, Badge No. 1443; LT. HAYNES, Badge No. 913; OFFICER BOB ANDERSON; OFFICER DAYLE E. COFFMAN; LT. LEE B. HARP; OFFICER WILLIAM A. RIDDLE; OFFICER ERIC MALONE OFFICER RONALD S. TROLLOPE; OFFICER TERRY D. MORROW; and THE WICHITA POLICE DEPARTMENT,
(Respondents)

On Petition For Writ of Ceriorari
To The United States Court of Appeals
for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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70 pp

1. Is a National Crime Information Center ("NCIC") computer printout a Constitutional substitute for the warrant requirement set out in Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) pertaining to multiple arrests of Petitioner in the privacy of his home?

2. Do all individual residents of a home have "standing" to bring a cause of action for repeated warrantless intrusions by police into their home while the residents are present?

3. Does a partial "NCIC hit" alone, provide sufficient probable cause, and Qualified Immunity, for the warrantless arrest of Petitioner in his home, absent exigent circumstances?

4. Is it a violation of an individual's Constitutional rights, specifically, his Fourth Amendment Right against unreasonable search and seizure and his First Amendment Right to privacy, for a City Ordinance to mandate that a surreptitious criminal investigation be performed as to all who obtain loans from pawn shops?

5. Were Petitioners denied adequate access to the Courts when their conspiracy claims were dismissed for insufficient evidence on Summary Judgment?

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OPINIONS BELOW:

This case was first filed in the United States District Court for the District of Kansas in August of 1992. In December 1994, the Defendant officers and City filed a Motion for Summary Judgment, alleging that all were entitled to qualified immunity. The Plaintiffs fully responded. The District Court granted Summary Judgment to all Defendants on all claims. A copy of the District Court's Memorandum and Order is attached hereto as Appendix A and incorporated herein by reference. Plaintiffs, ROBERTO A. RAMIREZ, STACIA RAMIREZ, STEPHANIE RAMIREZ and Bobby RAMIREZ, appealed the Summary Judgment granted to Defendants to the Tenth Circuit Court of Appeals.

On the 6th day of March, 1996, the Court of Appeals issued an unpublished Order and Judgment, which is appended hereto as Appendix B and incorporated herein by reference. The March 6, 1996, Order and Judgment affirms in part and reverses in part the District Court's Entry of Summary Judgment.

A Petition for Rehearing and Suggestion for Rehearing En Banc was denied by the Tenth Circuit on April 22, 1996. A copy of the denial is attached hereto as Appendix C and incorporated herein by reference.

JURISDICTION:

This is an action for injuries to the civil rights of Petitioners brought under 42 U.S.C. §1983; §1985; §1986; §1988; 28 U.S.C. §1331; and §1343(3), and the First,

Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is based on Federal Question Jurisdiction.

CONSTITUTIONAL PROVISIONS AND STATUTES:

United States Constitution
First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution
Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution
Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its

jurisdiction the equal protection of the laws.

28 U.S.C. § 1331
Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1343
Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person;

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section--

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985

Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his

duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vide President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1986

Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. § 1988(b)

Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], title VI of

the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

STATEMENT OF THE CASE:

On August 3, 1991, Roberto Ramirez obtained a short term loan from a pawn shop in the city of Wichita, Kansas, by pawning a rifle he owned. There was no indication or assertion that the rifle that Roberto Ramirez pawned was stolen. He later paid the loan and retrieved the rifle. Pursuant to "Wichita Police Department Pawnbroker Regulations," a copy of which is appended hereto as Appendix D and incorporated herein by reference, the Wichita Police Department proceeded to conduct a criminal investigation of Roberto, by running an "NCIC" check. A Municipal Code provision allows the Wichita Police Department to obtain identifying information and use it for criminal investigations, unbeknownst to the individuals pawning personal property. Approximately 20 days after obtaining identifying information, the Wichita Police Department allegedly obtained an "NCIC match" with one "Pedro" Ramirez, who had the same general Hispanic description and who had the same birth date as Roberto Ramirez. Defendants contended that there was a "murder warrant" in the state of Texas for "Pedro" pertaining to a murder committed sometime prior to 1983. The Defendants did not have any specific information concerning the murder, and never produced, observed, or reviewed any warrant.

On August 26, 1991, Defendant Officers McCullough and Barns, pursuant to instructions from their lieutenant, Officer Haynes, went to the Ramirez home at 3:00 a.m. Under a guise of vandalism to Ramirez's truck they enticed Roberto Ramirez out of his home, at which time they arrested and handcuffed him with his hands behind his back, and escorted him, wearing only shorts, about a block from his home. They kept him detained for a period of approximately two and a half hours. During this period of time, one officer returned to his home, went inside the home and demanded that his wife, Stacia, produce photos of the way Roberto looked in the early 1980s. Ultimately, Lt. Haynes made his way to the Ramirez home, at approximately 5:00 a.m., at which time he directed that Roberto be released, and at Roberto's request, gave him a written statement setting out that the three officers had investigated Roberto.

At 7:43 a.m., six or more officers returned to the Ramirez home at the direction of <u>their</u> superior, Lt. Harp. These officers surrounded the Ramirez home and had shotguns and side arms drawn and pointed at the home. One officer knocked at the door, at which time Stephanie Ramirez, the nine and one-half year old daughter of Roberto, ventured toward the door. Roberto came up behind her as she was moving to open the door. He saw that an officer was standing with a loaded gun pointed toward his and Stephanie's direction. As Roberto approached the door, the officer reached inside, grabbed Roberto and yanked him from his home, handcuffed him with his hands behind his

back, and seated him on the front porch in full view of his neighbors and other officers. Again, he was wearing only shorts--no shirt, no shoes. The children were frightened and began screaming and crying, and were kept at Roberto's side. Roberto Ramirez was told he was going to be extradited to Texas that morning to answer murder charges. He was kept handcuffed and seated on his front porch for a period of approximately two hours. Fearing extradition, Roberto relented and consented to give fingerprints when he was asked by the officers to agree to give his prints in order to prove his identity.

Ultimately, Roberto was taken downtown, his fingerprints were taken, and it was determined that he was not the "Pedro" Ramirez wanted on the ostensible, decade old, Texas "warrant." Roberto's children were traumatized and frightened during the period of time that he was handcuffed on his front porch on the morning of August 26. At one point, the officers took Stephanie, who was then nine and one-half years old, and Bobby, then five years old, into the Ramirez home to "get them dressed." Roberto remained on the front porch. Further, the officers conducted a thorough search of the Ramirez home, including looking into closets in the home. Roberto could hear them talking on the radio. When he asked them if they had a warrant, their response to him was, "We don't need one." No warrant has ever been produced in this matter, nor has any warrant ever been seen by any Defendant in this lawsuit. Petitioners sued for violations of their Civil Rights under the applicable Federal Statutes previously referenced.

The District Court granted summary judgment as to all claims against all Defendants on the grounds of qualified immunity. Further, the District Court found that Stacia, Roberto Ramirez's wife, and his two children, Stephanie and Bobby, lacked standing to assert a civil rights cause of action. Petitioners appealed to the Tenth Circuit. The Tenth Circuit opined that the Fourth Amendment prohibits police from arresting someone without either a warrant or probable cause, citing Romero v. Fay, 45 F.3d 1472, 1476 (10th Cir. 1995). Plaintiffs argued that the United States Supreme Court decision of Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) was controlling and that absent exigent circumstances, an arrest in an individual's home without a warrant is unconstitutional. The Tenth Circuit, however, found that the officers could rely on the NCIC information as justification for the first (3:00 a.m.) intrusion into the Ramirez's home, setting out that the NCIC printout provided adequate "probable cause" for them to arrest. The Court, though, found that the factual record was undeveloped in regard to what the officers knew concerning the second convergence on the Ramirez home at 7:43 a.m., and found, thus, that a genuine issue of material fact existed concerning the propriety of the second arrest and the search of the Ramirez home at that time.

The Tenth Circuit found that Roberto failed to demonstrate that a Constitutional violation resulted from a policy or custom attributable to the City in connection with his claims against the City for violation of his First and Fourth

Amendment rights concerning the routine criminal investigations of those individuals who do business with pawn shops. The Court reasoned that United States v. Marchant, 55 F.3d 509 (10th Cir.), cert. denied, 116 S.Ct. 260 (1995) supported a contention that Roberto had no reasonable expectation of privacy pertaining to the pawn shop loan information provided.

The Tenth Circuit further found that Roberto Ramirez's wife, Stacia, his daughter, Stephanie, and his son, Bobby, had no "standing" setting out that a §1983 Civil Rights action is a personal suit and that it does not accrue to a relative. The Court ruled that Stacia, Stephanie, and Bobby's allegations of psychological and emotional trauma and injuries were insufficient to provide them standing because, "They have failed to allege any violations of their individual Constitutional rights."

Further, the Circuit Court found that the Petitioners had failed to "prove" the conspiracy theories advanced.

CONSIDERATIONS SUPPORTING REVIEW ON WRIT OF CERTIORARI

The Tenth Circuit's March 6, 1996, Order and Judgment is in direct conflict with the Supreme Court's ruling in Payton v. New York, supra. Further, the Order and Judgment is an unpublished opinion despite the fact that the Court specified that it had not previously answered the precise inquiry of whether Qualified Immunity attaches to police officers based on an "NCIC hit" in a situation such as

this. As a result, the citizens of the Tenth Circuit are unaware that the protection of the Fourth Amendment warrant requirement has been compromised. The cases relied upon by the Tenth Circuit in support of its contention that the officers had "probable cause" and needed only "probable cause" to arrest Roberto Ramirez in his home at 3:00 a.m. and 7:43 a.m. on August 26, 1991, are contrary to the analysis of Payton. The cases cited involve public stops or situations where exigent circumstances are present. No exigent circumstances were alleged in this instance. With the advent of more and more computer generated NCIC information, this is a matter of extreme Constitutional importance. National Crime Information Center information is compiled and disseminated by law enforcement agencies all over the country. It is not generated by Impartial Magistrates. Substituting NCIC hits for the warrant requirement set out in Payton gives law enforcement agencies unfettered discretion in generating information to by-pass and avoid warrant requirements. It is important that the United States Supreme Court issue an opinion clarifying individuals' Fourth Amendment rights concerning arrests in their homes, in view of the apparent emphasis placed by Law Enforcement and the Federal Judiciary on the sufficiency, credibility and flexibility of "NCIC" computer information.

All residents of a home enjoy a Constitutional right to privacy and serenity. A finding by the Court of Appeals that Stacia, Stephanie and Bobby Ramirez lacked "standing" to bring a cause

is contrary to the Constitutional protections guaranteed by the First and Fourth Amendments.

Roberto Ramirez has a legitimate expectation of privacy regarding the confidential information provided in obtaining a loan from a pawn shop. Subjecting him to a criminal investigation for performing a lawful act is in violation of his First and Fourth Amendment rights.

Dismissal of the Petitioners' conspiracy claims for lack of evidence at the summary judgment level effectively deprived them of access to the courts. Under the undisputed facts of this case, Petitioners could prove a conspiracy if allowed the opportunity to present their case. A conspiracy may be proved by circumstantial evidence. Without the benefit of a trial, Petitioners were deprived of the forum necessary to meet their burden of proof.

WHEREFORE, Plaintiffs pray that this Honorable Court grant this, their Petition for Writ of Certiorari.

Respectfully submitted,

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BY: Patricia J. Matassarin
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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
U.S.DISTRICT COURT
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Ralph DeLooch
Clerk
By_____Deputy

ROBERTO A. RAMIREZ,
STACIA RAMIREZ,
STEPHANIE RAMIREZ
and BOBBY RAMIREZ,
Plaintiffs,

ENTERED ON DOCKET
DATE: 4-13-95

v.

NO. 92-1437-PFK

CITY OF WICHITA;
OFFICER McCULLOCH,
Badge No. 1467;
OFFICER BARNES,
Badge No. 1443;
LIEUTENANT HAYNES,
Badge No. 913;
OFFICER BOB ANDERSON;
OFFICER DALE E. COFFMAN;
LIEUTENANT LEE B. HARP;
OFFICER WILLIAM A. RIDDLE;
OFFICER ERIC MALONE;
OFFICER RONALD S. TROLLOPE;
OFFICER TERRY D. MORROW;
and THE WICHITA POLICE
DEPARTMENT,
Defendants.

MEMORANDUM AND ORDER

This matter comes before the court on defendants' motion for summary judgment pursuant to Fed.R.Civ.P. 56. Plaintiffs brought this suit against the City of Wichita, Kansas, as well as numerous individual officers of the Wichita Police Department (WPD), alleging defendants

violated their constitutional rights. Plaintiffs' causes of action arise out of the false arrest of plaintiff Roberto A. Ramirez by defendant police officers. On February 21, 1995, the court heard the parties' arguments and adjourned to review and consider the arguments. The court is now ready to make the following findings of fact and conclusions of law.

On August 3, 1991, Roberto Ramirez pawned a rifle at a pawn shop in Wichita, Kansas. Roberto supplied a Kansas driver's license as identification and his name, birth date, and physical description were recorded by the store clerk. The store clerk then supplied the WPD with the following information: Roberto Ramirez, white male, age 36 (06-29-1955), height 5'7", weight 150, brown hair, and brown eyes.

Defendant officer Robert Anderson ran a routine screening of this information on the Special Police Information Data Entry and Retrieval, through the National Crime Information Center (NCIC) computer. The NCIC provided Anderson with the information that a Pedro Ramirez, white male, birth date 06-29-1955, height 5'8", weight 150, with brown hair and brown eyes, was wanted on a Dallas County, Texas warrant for murder. On August 22, 1991, Anderson teletyped the Dallas County Sheriff's Office. He requested confirmation on the warrant and asked if that jurisdiction would be willing to extradite the suspect. The following day, the Dallas County Sheriff's Office confirmed that the warrant was active and that Dallas County would be willing to extradite the suspect. The information

sent to Anderson indicated Pedro Ramirez was also known as Jose Medina. Based on the similarities between Roberto Ramirez and Pedro Ramirez, Anderson referred the matter to the WPD East Patrol Division for further action. Anderson had no further involvement with the Roberto Ramirez case.

The WPD's first encounter with Roberto Ramirez occurred during third shift on August 26, 1991. Lt. Haynes assigned officers McCulloch and Barnes to locate Roberto and determine whether he was the individual wanted on the Texas warrant. McCulloch and Barnes went to Roberto's home at 3:00 a.m. The officers told Roberto that some cars had been vandalized in the area and asked if he would come outside to see if there was anything wrong with his vehicles. Roberto followed the officers some distance from his home before McCulloch and Barnes handcuffed him and began asking him questions. When asked if he had ever been to Dallas, Texas, Roberto replied that this must be about a homicide in Dallas and that he had not been involved. The officers believed Roberto looked like the photograph provided via teletype by the Dallas County Sheriff's Office. Roberto admitted living in the Arlington and Dallas, Texas areas in 1979-80 (the homicide had occurred prior to 1983). Stacia, Roberto's wife, also denied that Roberto was the individual wanted for murder. She supplied the officers with photographs of Roberto from about 1979, for purposes of comparing with the photograph supplied by the Dallas County Sheriff's Office. Plaintiffs complain that these photographs were not returned, and therefore defendants deprived them of

their property. Roberto told McCulloch he had formerly been married to a woman whose last name was Medina; this was part of the basis for McCulloch believing Roberto was actually Pedro Ramirez.

McCulloch requested assistance from Lt. Haynes, who came to Roberto's home. After further review, Lt. Haynes made the decision to release Roberto and gave him a written document which stated:

> WPD CASE NUMBER
> 91C079366
>
> CHECKED OUT ABOUT HOMICIDE
> CASE BY THE WICHITA POLICE
> DEPARTMENT ON 8-26-91
>
> OFFICER McCULLOCH #1467
> OFFICER BARNES #1443
> LT. HAYNES #913

(Pltfs.' Response, Roberto Ramirez Aff. at Ex. A.) Lt. Haynes instructed Roberto to show this note to other officers in the event he was questioned again. The officers departed at about 5:00 a.m.

Lt. Lee Harp worked first shift at the East Patrol Division; first shift begins at 7:00 a.m. On the morning of August 26, 1991, Lt. Harp found the information about Roberto Ramirez on the squad room desk and relayed it to the beat officers. Officer Dale E. Coffman[1]

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[1]In their response, plaintiffs challenge officer Coffman's affidavit (Defts.' Memo. in Support, Ex. D) because it states his report "was dictated by

attended the first shift squad meeting and was under the impression that third shift had been to Roberto's home, but could not determine whether Roberto was in fact the Pedro Ramirez wanted on the Texas warrant. Coffman, along with William A. Riddle, Ronald S. Trollope, Eric Malone, and Terry D. Morrow, went to Roberto's home, and arrived at 7:43 a.m. The officers approached the house with their guns drawn. Roberto's two children, Stephanie and Bobby Ramirez, answered the door.

According to Roberto, when he arrived at the door Malone and Coffman pulled him outside and handcuffed him. Roberto told the officers that he had already talked to third shift officers and they had released him. The officers contend they did a cursory search of the home immediately accessible to Roberto, as a protective measure incident to Roberto's arrest. In contrast, Roberto states the officers proceeded to search his home, including looking in the bedroom closets. Roberto told the officers he had to go to the bathroom, and after making him wait on the front porch for an hour, they finally escorted him to the bathroom.

When Roberto was handcuffed, Stephanie and Bobby were crying and

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[Coffman] on or about August 21, 1991," five days before the incident occurred. The report itself, numerous times, describes the events of "8/26/91". The court will not disregard the information found in the report because of a misstatement of a date in Coffman's affidavit.

frightened. Stacia was at work. Some officers took the children inside the house to get them dressed. After being called, Stacia returned home to care for Stephanie and Bobby.

One of the third-shift officers, McCulloch, arrived at the Ramirez home and told Roberto he was sure Roberto was the person wanted on the Texas warrant. At approximately 8:19 a.m., Coffman read the Miranda warning card to Roberto, and Roberto stated he understood the warning. Roberto answered a few questions regarding his address, place of employment, and place of birth. Roberto then indicated he wanted a lawyer and Coffman asked him no further questions concerning the Texas warrant and the alleged murder.

Pursuant to WPD procedure, Lt. Harp was contacted to obtain approval for Roberto's arrest prior to transporting him to the booking facility. By this time, the Dallas County Sheriff's Office had furnished fingerprints of Pedro Ramirez to the WPD. Therefore, Lt. Harp contacted a department fingerprint examiner, who came on duty at 8:00 a.m. Lt. Harp instructed Coffman to ask Roberto to voluntarily accompany the officers downtown to give fingerprint samples that could be used for comparison. According to Roberto, the officers told him he would be extradited to Texas that morning. Fearing extradition, Roberto felt he had no choice but to provide the requested fingerprint samples.

Roberto accompanied Coffman to the warrant office where fingerprints were made. The fingerprint examiner verified

that Roberto Ramirez was not the Pedro Ramirez wanted for murder by Dallas County, Texas. Officer Riddle then took Roberto home. The encounter with the first shift officers lasted about two hours. On October 30, 1991, Deputy Chief Steve Trainer provided Roberto with a letter of apology that Roberto could carry with him in case he was stopped in the future within the jurisdiction of the WPD.

Following these encounters with the WPD officers, every member of the Roberto Ramirez family suffered some emotional problems. Stacia maintains that she has "suffered great emotional distress, marital problems, and [has] sought professional counseling to help [her] deal with these problems" (Pltfs.' response, Stacia Ramirez Aff. ¶ 6.) Stephanie's problems prompted her to talk to a school counselor. Bobby "has demonstrated a growing hostility and dislike for authority figures, especially law enforcement officers." (Id., Stacia Ramirez Aff., ¶ 8.)

In their amended complaint, plaintiffs alleged five causes of action. First, all defendants violated "Roberto A. Ramirez' rights to be free of an unreasonable search and seizure under the Fourth and Fourteenth Amendments," violated his right of privacy, and violated "his right to be free of any deprivation of liberty under the Fourteenth Amendment" (Amended Complaint at ¶ 51), and as well violated Stacia, Stephanie, and Bobby's rights of privacy, all in violation of 42 U.S.C. § 1983. Second, Roberto alleges defendants conspired to deprive him of his rights, in

violation of 42 U.S.C. §§ 1983, 1985, and 1986. Third, plaintiffs assert that they "are all members of a 'protected class' in connection with 42 U.S.C. 1981 and 1983 claim analysis" (Amended Complaint at ¶ 60), and that defendants disregarded their rights. Fourth, plaintiffs claim the City of Wichita, acting through the WPD, knew or should have known of the police officers' misconduct and either approved of or demonstrated a deliberate indifference to that misconduct, in violation of 42 U.S.C. § 1983. Finally, plaintiffs allege a pendent state law claim that defendants acted contrary to Kansas law and deprived plaintiffs of their rights.

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). When considering a motion for summary judgment, the court must resolve all disputed facts in favor of the nonmoving party. White v. General Motors Corp., Inc., 908 F.2d 669, 670 (10th Cir. 1990), cert. denied, 498 U.S. 1069 (1991). The moving party must prove beyond a reasonable doubt that it is entitled to summary judgment. Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980).

The moving party is entitled to judgment as a matter of law if the nonmoving party fails to make a sufficient showing of an essential element of the case to which the nonmoving party has the

burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The existence of some disputed facts does not automatically preclude granting summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). One of the principal purposes of summary judgment is to isolate and dispose of factually unsupported claims or defenses, and the rule should be interpreted in a way that allows it to accomplish this purpose. Celotex, 477 U.S. at 323-24.

Qualified Immunity

The individual officers claim the affirmative defense of qualified immunity from plaintiffs' claims under §§ 1981 and 1983. Qualified immunity is sometimes referred to as "good faith immunity." Quezada v. County of Bernalillo, 944 F.2d 710, 718 (10th Cir. 1991). The Tenth Circuit has explained:

> Qualified immunity is an affirmative defense that protects government officials from personal liability unless their actions violate clearly established law of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396 (1982). Once the defense has been raised and the plaintiffs have met their burden of identifying both the clearly established law that the government official is alleged to have violated and the conduct that violated that law, the defendant must demonstrate that no material issues of fact remain as to whether his or her actions were objectively reasonable in light of the law and

> the information he or she possessed at the time. Pueblo Neighborhood Health Centers, Inc. v. Losavio, 847 F.2d 642, 646 (10th Cir. 1988). A defendant who makes such a showing of objective reasonableness is entitled to summary judgment unless the plaintiff can demonstrate that there are factual disputes relevant to the defendant's claim to immunity. DeVargas v. Mason & Hanger-Silas Co., 844 F.2d 714, 719 (10th Cir. 1988) (citing Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S. Ct. 2806, 2815, 86 L. Ed. 2d 411 (1985)).

Coen v. Runner, 854 F.2d 374, 377 (10th Cir. 1988).

Recently, the Tenth Circuit in Romero v. Fay, 45 F.3d 1472 (10th Cir. 1995), emphasized the first step in the analysis of a qualified immunity claim, that being the requirement that the plaintiff must assert a violation of a constitutional right. The court explained:

> In order to carry his burden the plaintiff must do more than identify in the abstract a clearly established right and allege that the defendant has violated it. Hannula [v. City of Lakewood, 907 F.2d 129, 131 (10th Cir. 1990)]. Rather, the plaintiff must articulate the clearly established constitutional right and the defendant's conduct which violated the right with specificity, Pueblo Neighborhood Health Ctrs. v. Losavio, 847 F.2d 642, 645 (10th Cir. 1988), and "demonstrate a 'substantial correspondence between

> the conduct in question and the prior law . . . establishing that the defendant's actions were clearly prohibited.'" Hovater [v. Robinson, 1 F.3d 1063, 1066 (10th Cir. 1993)] (quoting Hannula, 907 F.2d at 130). "Unless such a showing is made, the defendant prevails." Losavio, 847 F.2d at 646; see also Hannula, 907 F.2d at 131.

45 F.3d at 1475. To ascertain whether a plaintiff has met his burden, the district court must look at the asserted facts in his complaint and response to defendant's motion for summary judgment. 45 F.3d at 1478 (citing Siegert v. Gilley, 500 U.S. 226, 231-32 (1991)).

Here, in their amended complaint and response to defendants' motion for summary judgment, plaintiffs allege WPD officers twice arrested Roberto without a warrant for his arrest, as well as searched his home without a warrant. Plaintiffs contend these facts show defendants violated their Fourth Amendment right to be secure in their persons and home against unreasonable searches and seizures, without a warrant issued on probable cause. The application of Fourth and Fourteenth Amendment rights, however, is not that simplistic. See Anderson v. Creighton, 483 U.S. 635, 639 (1987) (an allegation of a violation of an "extremely abstract right" does not meet the test of stating a violation of a "clearly established law"). Here, plaintiffs fail to cite a single case that directly supports their contention of a constitutional violation, and therefore they have not met their burden of showing

that the officers' actions violated a clearly established law.

Assuming for the sake of argument that plaintiffs have met their burden, the burden then shifts to defendants to show that no issue of material fact exists that precludes summary judgment on their claim of qualified immunity. Losavio, 847 F.2d at 646. Defendants must how that under the specific facts of this case, they did not violate clearly established law in existence at the time of their actions. Creighton, 483 U.S. at 641. Although the official's exact actions need not have been held previously unlawful, it must be apparent from pre-existing law that the acts were unlawful. Creighton, 483 U.S. at 640. This means that even if plaintiffs' rights were in fact violated, defendants are entitled to qualified immunity if officials of reasonable competence would disagree as to whether their conduct violated plaintiffs' clearly established federal right. Bailey v. Kenney, 791 F. Supp. 1511, 1516 (D. Kan. 1992).

Here, defendants assert they were entitled to rely upon the NCIC information to establish probable cause to arrest. See e.g., United States v. McDonald, 606 F.2d 552, 554 (5th Cir. 1979) ("NCIC printouts are reliable enough to form the basis of the reasonable belief which is needed to establish probable cause for arrest"). The fact that the wrong person is arrested does not nullify the probable cause determination of the warrant; it is still a facially valid warrant based upon a probable cause determination by a magistrate. Mensh v. Dyer, 956 F.2d 36,

39 (4th Cir. 1991); See also Graham v. Connor, 490 U.S. 386, 396 (1989) ("The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested"). Thus, the question presented is whether the individual officers acted reasonably based on the information obtained through NCIC and the Dallas County Sheriff's Office.

Based on the information from NCIC and the Dallas County Sheriff's Office, and the information received from the pawn shop, the officers believed Roberto Ramirez was in fact Pedro Ramirez, who was wanted for murder in Texas. The officers also believed the person they were going to question and possibly arrest was likely to be armed and dangerous. Thus, the third shift officers went to the Ramirez home at 3:00 a.m. in the hope of catching the suspect off guard. McCulloch and Barnes led Roberto away from his house to protect their own and Roberto's safety. They followed police procedure by calling their supervisor, Lt. Haynes, for a determination of whether Roberto should be transported to the booking facility. Even after looking at photographs of Roberto, they could not determine conclusively that Roberto was not Pedro, and therefore they left.

Lt. Harp found the information on the Texas warrant. It is not clear whether he was fully informed of the first shift officers' actions; it is apparent that he knew a conclusive determination had not been made. Thus, Lt. Harp sent officers back to the Ramirez residence. Again, believing a person wanted for murder and

most likely armed was within the house, the officers approached the house with their guns drawn. They placed Roberto under arrest and conducted a search. The officers then called their supervisor, Lt. Harp. By this time, the Dallas County Sheriff's Office had sent fingerprints of Pedro Ramirez. Lt. Harp instructed the officers to ask Roberto to voluntarily provide fingerprint samples for comparison with Pedro's. Although it is likely Roberto felt intimidated, he voluntarily provided the fingerprints. Once it was determined that Roberto was not Pedro, Roberto was released.

An arrestee's constitutional rights are not violated if the arresting officers' actions are based on a reasonable belief that they are arresting the right person, even when the arrest is based upon a mistake in identity. In Bailey v. Kenney, Judge Belot summarized the applicable law as follows:

> "A reasonable mistake in identification which leads to an arrest does not violate the arrestee's constitutional rights." Dean v. City of Worchester, 924 F.2d 364, 368 n. 4 (1st Cir. 1991). This principle was expressed by the Supreme Court in Hill v. California, 401 U.S. 797, 91 S. Ct. 1106, 28 L. Ed. 2d 484 (1971), where the police arrested a person whom they mistook for a person whose arrest was supported by probable cause. The Court held:
>
> > "[S]ufficient probability, not certainty, is the touchstone of

> reasonableness under the Fourth Amendment and on the record before us the officers' mistake was understandable and the arrest a reasonable response to the situation facing them at the time."

401 U.S. at 804, 91 S. Ct. at 1111. Relying on Hill, the Supreme Court has recently reaffirmed that "in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government . .. is not that they always be correct, but that they always be reasonable." Illinois v. Rodriguez, 497 U.S. 177, 110 S. Ct. 2793, 2800, 111 L. Ed. 2d 148 (1990). See also . . . Gero v. Henault, 740 F.2d 78, 85 (1st Cir. 1984) (no constitutional violation for mistaken arrest of person bearing strong resemblance to subject of arrest warrant), cert. denied, 469 U.S. 1191, 105 S. Ct. 965, 83 L. Ed. 2d 970 (1985).

791 F. Supp. at 1517-18.

In Baker v. McCollan, 443 U.S. 137 (1979), plaintiff Linnie McCollan's brother, Leonard McCollan, duplicated Linnie's driver's license but with his own (Leonard's) photograph on it. Leonard was arrested on narcotics charges, and based on the identification he provided, he was booked as Linnie. When Leonard jumped bail, a warrant for his arrest was issued. Later, Linnie was stopped for a traffic

violation and taken into custody on the outstanding warrant, despite Linnie's claim of mistaken identity. Authorities did not uncover the mistake until eight days later, after they had compared Linnie's appearance with the mug shot taken of Leonard. The issue in Baker was whether Linnie's detention was unconstitutional. 443 U.S. at 142. The Court noted Linnie "was arrested pursuant to a facially valid warrant." 443 U.S. at 143. The Court concluded Linnie did not have a claim cognizable under § 1983. In so holding, the Court stated, "The Fourth Amendment does not protect against all deprivations of liberty. It protects only against deprivations of liberty accomplished 'without due process of law.'" 443 U.S. at 145.

Baker left open the possibility that in certain exceptional cases the Constitution may require police to investigate an arrestee's innocence, but did not set out a clearly defined rule. See 443 U.S. at 145. In Masters v. Crouch, 872 F.2d 1248, 1253 (6th Cir. 1989), the court relied upon Baker and stated:

> While the language [of Baker] clearly supports an implication that there may be cases where such an investigation is required, it is not a sufficient statement to satisfy the requirement that the right relied upon must be "clearly established." We have found no case from the Supreme Court or this court holding an arresting officer with a valid warrant, or a custodian, liable in a § 1983 action for arresting and

> detaining the wrong person for a brief time due to a mistake in identity.

In Bailey, supra, two police officers and a bail bondsman had an arrest warrant for James D. Bailey. They located the plaintiff, who was also named James D. Bailey, and forced their way into his home with guns drawn. When the officers checked the plaintiff's appearance against a mug shot of the suspect, it was determined that he was not the fugitive. Plaintiff brought a § 1983 claim against the officers, the bondsman, and the city. The court held that both officers were entitled to qualified immunity because "reasonable officers could disagree as to whether the fugitive Bailey was within the house." 791 F. Supp. at 1520.

Plaintiffs here complain not only of Roberto's arrest, but also of the officers' search incident to his arrest. In Hill v. State of California, 407 U.S. 797 (1971), the Court addressed a different issue than the search-related issue presented here. In Hill, however, the Court held that evidence seized by police in a search incident to an arrest based upon the misidentification of a suspect was admissible in court. The Court explained:

> The upshot was that the officers in good faith believed Miller was Hill and arrested him. They were quite wrong as it turned out, and subjective good-faith belief would not in itself justify either the arrest or the subsequent search. But sufficient probability, not

> certainty, is the touchstone of reasonableness under the Fourth Amendment and on the record before us the officers' mistake was understandable and the arrest a reasonable response to the situation facing them at the time.
>
> Nor can we agree with petitioner that however valid the arrest for Miller, the subsequent search violated the Fourth Amendment. . . . Here there was probable cause to arrest Hill and the police arrested Miller in Hill's apartment, reasonably believing him to be Hill. In these circumstances the police were entitled to do what the law would have allowed them to do if Miller had in fact been Hill, that is, to search incident to arrest and to seize evidence of the crime the police had probable cause to believe Hill committed. When judged in accordance with "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act," Brinegar v. United States, 338 U.S. 160, 175 (1949), the arrest and subsequent search were reasonable and valid under the Fourth Amendment.

401 U.S. 803-05.

"To defeat a defendant's showing that no material fact exists, 'plaintiffs cannot rely on conclusory allegations; they must produce some specific factual support for their claim of unconstitutional motive.' Losavio, 847 F.2d at 649." Bisbee v. Bey, 39 F.3d

1096, 1100 (10th Cir. 1994), petition for cert. filed, 63 U.S.L.W. 3707 (Mar. 17, 1995). Here, based on the facts presented and the applicable law, plaintiffs fail to meet this requirement. The court finds the individual officers reasonably relied upon the NCIC printout and the information from the Dallas County Sheriff's Office, and that probable cause existed to arrest Pedro Ramirez. The fact that the officers arrested Roberto Ramirez due to a mistake in identity does not violate the Fourth Amendment. Accordingly, the officers are entitled to qualified immunity.

§ 1985 Conspiracy Claim

Plaintiffs allege a cause of action against defendants based upon a violation of 42 U.S.C. § 1985, which provides in part:

> (3) Depriving persons of rights or privileges.
>
> If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

In Bisbee, supra, the Tenth Circuit held that "defendants in section 1985 actions are entitled to claim qualified immunity." 39 F.3d at 1102. The court

then stated:

> A violation of section 1985 must include class-based or racially discriminatory animus. "[I]n the absence of allegations of class based or racial discriminatory animus, the complaint fails to state a claim under § 1985." Campbell v. Amax Coal Co., 610 F.2d 701, 702 (10th Cir. 1979 (per curiam)).

39 F.3d at 1102 (citations omitted). In their amended complaint, plaintiffs' second cause of action alleges violations of 42 U.S.C. §§ 1983, 1985 and 1986, and states Roberto's arrest, detention, and imprisonment was a "result of a conspiracy between and among the Defendants." (Amended Complaint at ¶ 58.) Their third cause of action alleges a violation of 42 U.S.C. §§ 1981, 1983, 1985, and 1986, and states plaintiffs "are all members of a 'protected class' in connection with 42 U.S.C. 1981 and 1983 claim analysis." (Amended Complaint at ¶ 60.) In their amended complaint and response to the motion for summary judgment, plaintiffs do not explain further the protected class of which they are members. At the hearing on this matter, however, plaintiffs' counsel stated that plaintiffs are Hispanic and argued that the officers' conduct was racially motivated.

The court finds plaintiffs have failed to properly state a claim pursuant to 42 U.S.C. § 1985. Even assuming plaintiffs alleged a claim in their amended complaint, they have not set forth facts of a conspiracy among defendants other than to point out the lack of

communication between third shift and first shift officers.

Liability of the City of Wichita

Municipalities cannot claim the qualified immunity defense. Owen v. City of Independence, 445 U.S. 622, 638 (1980). In Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690-91 (1978), the Court stated:

> Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person," by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels.

The Court held "that a municipality cannot be held liable solely because it employs a tortfeasor--or, in other words, a municipality cannot be held liable under § 1983 on a respondeat superior theory." 436 U.S. at 691. Thus, the City of

Wichita cannot be held liable merely because an employer/employee relationship exists between it and the officers. the City is liable only if plaintiffs can establish a policy or custom of condoning constitutional violations and a causal link between the policy and plaintiffs' injuries. Hinton v. City of Elwood, Kan., 997 F.2d 774, 782 (10th Cir. 1993).

Plaintiffs contend the city ordinance that requires pawnshop operators to report the serial number, if any, of the item pawned, and a description of the person pawning the item including name, driver's license number, sex, race, age, height, weight, hair color, color of eyes, and date of birth (City of Wichita Charter Ordinance 134, § 11(a) & (b)) is unconstitutional. That ordinance is authorized by K.S.A. § 16-716 (1988), which provides in part:

> (a) At the time of making a loan, a pawnbroker shall enter in a book kept for that purpose;
>
> (1) The date, duration, amount and charges of every loan made by the pawnbroker;
>
> (2) a full and accurate description of the property pledged; and
>
> (3) the name, age, residence and driver's license or other personal identification number of the pledgor.

Law enforcement officers have access to pawnbrokers' business records. K.S.A. §

16-718 (1988).

"Kansas has long recognized the need to exercise its policy power in the regulation of pawnbrokers." Joe Flynn Rare Coins Inc. v. Stephan, 526 F. Supp. 1275, 1278 (D. Kan. 1981). The statutory provisions regulating pawnbrokers cited above have been found to be constitutional. Id.

Plaintiffs also argue that the policy or custom that creates liability for the City is demonstrated by the fact that police officers went to the Ramirez home and arrested Roberto twice within a span of a few hours. This evidence, however, is not sufficient to prove a policy or custom of the City. Thus, the City is not liable for plaintiffs' alleged injuries.

Standing of Stacia, Stephanie and Bobby Ramirez

Defendants argue that Stacia, Stephanie, and Bobby do not have standing to bring any claims against them pursuant to 42 U.S.C. § 1983. Stacia was present during the first visit to the Ramirez house and discussed the arrest with the police officers in an attempt to convince them Roberto Ramirez was not Pedro Ramirez. She, herself, was not arrested, handcuffed, or detained. Bobby and Stephanie were present during the officers' second visit to the Ramirez home. The children saw officers with their weapons drawn and may have overheard the officers speaking of Roberto's arrest for homicide and his possible extradition on that charge.

In Archuleta v. McShan, 897 F.2d 493, 497 (10th Cir. 1990), the Tenth Circuit repeated the well-settled rule of law "that a section 1983 claim must be based upon the violation of plaintiff's personal rights, and not the rights of someone else." In Archuleta, a child brought a § 1983 action against a police officer and his supervisors based on the child's observation of his father's arrest by the officer. The plaintiff-child alleged "the officer acted with intentional or reckless disregard and indifference to his emotional well-being during the arrest." Id. at 496. The district court dismissed the action on defendants' motion for summary judgment.

On appeal, the Tenth Circuit noted the plaintiff claimed a liberty interest under the Fourteenth Amendment "to be free of emotional trauma." the court, relying upon a line of Supreme Court cases, concluded those cases require "that there be an element of deliberateness in directing the misconduct toward the plaintiff before the Due Process Clause is implicated." Id. at 498 (citing City of Canton, Ohio v. Harris, 489 U.S. 378 (1989); Davidson v. Cannon, 474 U.S. 344, 348 (1986); Daniels v. Williams, 474 U.S. 327, 331 (1986)). Ultimately, the Tenth Circuit affirmed the district court.

In Dohaish v. Tooley, 670 F.2d 934 (10th Cir.), cert. denied, 459 U.S. 826 (1982), the father of an alleged murder victim brought an action under § 1983 against a state district attorney and claimed the district attorney's failure to prosecute his son's alleged murderer was motivated by prejudice against Saudi

Arabians. The court held the father did not have standing to bring a § 1983 action because the father failed to show any violation of his (the father's) civil rights. In other words, any discrimination allegedly directed at his son did not extend to him. Other courts have found "[f]ear or emotional injury which results solely from verbal harassment or idle threats is generally not sufficient to constitute an invasion of an identified liberty interest." Pittsley v. Warish, 927 F.2d 3, 7 (1st Cir.), cert. denied, 502 U.S. 879 (1991).

Here, there is no evidence that the officers' actions were directed toward Stacia, Stephanie, and Bobby. Thus, although they were frightened, the court must find Stacia, Stephanie, and Bobby lack standing to bring claims under § 1983.

Furthermore, as stated above, the officers acted reasonably under the circumstances. A law enforcement officer may arrest a person if the officer has probable cause to believe that person has committed a felony. K.S.A. 22-2401(C)(1) (1988). Kansas law further provides:

> (1) An arrest is made by an actual restraint of the person arrested or by his submission to custody.
>
> (2) An arrest may be made on any day and at any time of the day or night.
>
> (3) All necessary and reasonable force may be used to effect an entry

upon any building or property or part thereof to make an authorized arrest.

K.S.A. § 22-2405 (1988). The mere fact that family members are present and frightened during a valid arrest does not give those family members a cause of action. Because the officers acted reasonably, they are entitled to qualified immunity.

Based on the court's findings on all issues raised by defendants, the court shall grant summary judgment on all of plaintiffs' federal claims.

Pendent State Law Claims

Defendants argue that if plaintiffs' federal causes of action are dismissed, the court should decline jurisdiction over their pendent state claims of assault, false arrest, false imprisonment, outrageous conduct, conversion of personal property, and intentional infliction of emotional and physical distress. The decision of whether to exercise supplemental jurisdiction is within the district court's discretion. In fact the district court is expressly authorized to decline supplemental jurisdiction if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3).

Unless the district court is aware of compelling reasons weighing in favor of exercising supplemental jurisdiction, it should dismiss the suit because notions of comity and federalism demand that a state court try its own lawsuits. Thatcher Enterprises v. Cache County Corp., 902 F.2d 1472, 1478 (10th Cir. 1990). When

making such a decision, the district court should consider the nature and extent of pretrial proceedings, judicial economy, convenience, and fairness. Id.; see also Siefkes v. Nichols, 788 F. Supp. 477, 481-82 (D. Kan. 1992) (failure to state a claim under § 1983 prompted court to dismiss pendent state law claims).

The court finds there is no compelling reason to exercise supplemental jurisdiction over plaintiffs' pendent state law claims. Therefore, these claims shall be dismissed.

IT IS ACCORDINGLY ORDERED this 13th day of April, 1995, that defendants' motion for summary judgment (Dkt. No. 83) is granted. Plaintiffs' remaining state law claims are dismissed.

/s/
PATRICK F. KELLY, JUDGE

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
UNITED STATES COURT OF APPEALS
TENTH CIRCUIT - MAR 06 1996
PATRICK FISHER, CLERK

ROBERTO A. RAMIREZ,
STACIA RAMIREZ,
STEPHANIE RAMIREZ
and BOBBY RAMIREZ,
Plaintiffs-Appellants,

v.

No. 95-3148
(D.C. No. 92-1437)
(D. Kansas)

CITY OF WICHITA;
OFFICER McCULLOCH,
Badge No. 1467;
OFFICER BARNES,
Badge No. 1443;
LIEUTENANT HAYNES,
Badge No. 913;
OFFICER BOB ANDERSON;
OFFICER DALE E. COFFMAN;
LIEUTENANT LEE B. HARP;
OFFICER WILLIAM A. RIDDLE;
OFFICER ERIC MALONE;
OFFICER RONALD S. TROLLOPE;
OFFICER TERRY D. MORROW;
and THE WICHITA POLICE
DEPARTMENT,
Defendants-Appellees.

ORDER AND JUDGMENT*

Before **PORFILIO**, Circuit Judge; **HOLLOWAY**, Senior Circuit Judge; and **HOLMES**, District Judge.**

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and

judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** Honorable Sven Erik Holmes, United States District Court Judge for the Northern District of Oklahoma, sitting by designation.

Roberto A. Ramirez, his wife, and his two minor children brought this civil rights action pursuant to 42 U.S.C. §§ 1981, 1983, 1985, and 1986 and Kansas state law against the City of Wichita, the Wichita Police Department (WPD), and ten Wichita police officers. The plaintiffs contended their civil rights were violated when Wichita police twice mistakenly arrested Mr. Ramirez after confusing him with a person wanted in Texas on a murder warrant. The district court granted summary judgment for all the defendants. We affirm on all issues except the district court's conclusion the individual officers were entitled to qualified immunity regarding the second arrest.

The confusion between plaintiff, Roberto Ramirez, and the Texas fugitive, Pedro Ramirez, arose when plaintiff pawned a firearm with a Wichita pawnbroker. As required by the City's ordinance, the broker forwarded information on the pawn, including Mr. Ramirez' physical description and date of birth, to the Wichita police, who, in turn, attempted to match that information to data on the National Crime Information Center computer.

The search resulted in a match between Roberto and Pedro Ramirez. Significantly, their birth dates, weight,

and physical description were identical. Only their given names and height, which indicated a difference of one inch, did not coincide exactly. The officer who discovered the match forwarded the information for investigation.

On August 26, 1991, during the third shift, Lt. Darrell Haynes sent two officers to the Ramirez home to determine whether Mr. Ramirez was the wanted fugitive. Arriving at approximately 3:00 a.m., the officers learned Mr. Ramirez had previously been questioned about the same murder several years before and knew about the confusion. After comparing a teletype photograph of Pedro Ramirez with Mr. Ramirez' present appearance and old photographs of him, one of the officers requested assistance from Lt. Haynes.

When Lt. Haynes arrived at the scene, he unsuccessfully attempted to obtain additional information about Pedro Ramirez from Texas authorities. Unable to confirm Mr. Ramirez was the fugitive, Lt. Haynes ordered his release. Prior to leaving, Lt. Haynes gave Mr. Ramirez a document prepared by Haynes stating Mr. Ramirez had been "checked out about the homicide case." Lt. Haynes and the two officers then left at approximately 5:00 a.m.

Two hours later, Lt. Lee B. Harp arrived for work on the first shift and on his desk found the information concerning Roberto Ramirez and the outstanding warrant for Pedro Ramirez. He passed the information on to the first shift officers under his command.

Soon thereafter, five first shift officers went to Mr. Ramirez' home,

arriving at 7:43 a.m. According to Mr. Ramirez, when he came to the door, two officers handcuffed him and took him outside. The other officers then conducted a search of the Ramirez home, but they and Mr. Ramirez disagree over the scope of that search. That disagreement remains unresolved.

Mr. Ramirez informed the officers about the encounter he had less than three hours before, prompting the officers at the scene to contact Lt. Harp, who informed them the Dallas County Sheriff's Office had provided fingerprints of Pedro Ramirez to the WPD. With Mr. Ramirez' consent, his fingerprints were taken and compared to those of the Texas suspect. The comparison established plaintiff was not Pedro Ramirez, and the officers released him. This suit ensued.

Initially, Mr. Ramirez argues two theories why the district court erred in granting summary judgment on qualified immunity grounds to the individual police officers. He contends police violated a clearly established constitutional right, and he asserts genuine issues of material fact remain in controversy precluding summary judgment. We conclude the district court properly granted the individual WPD officers qualified immunity regarding the first arrest, but agree with Mr. Ramirez factual issues remain in controversy precluding summary judgment in connection with the second arrest.

We review both the district court's qualified immunity decision and its conclusion no genuine issues of material fact existed precluding summary judgment de novo. **Wilson v. Meeks**, 52 F.3d 1547,

1551 (10th Cir. 1995); **Cummins v. Campbell**, 44 F.3d 847, 850 (10th Cir. 1994). When a defendant raises the affirmative defense of qualified immunity, the plaintiff assumes the burden of showing the defendant's actions violated either a constitutional or statutory right, and the right alleged to have been violated was clearly established at the time of the defendant's conduct. **Albright v. Rodriguez**, 51 F.3d 1531, 1534-35 (10th Cir. 1995). If a plaintiff satisfies this two-part test, the burden shifts to the defendant to show there are no genuine issues of material fact at issue precluding summary judgment. **Id.** at 1535. The traditional summary judgment standard applies. The evidence is considered in the light most favorable to the non-moving party, **Applied Genetics Int'l v. First Affiliated Sec., Inc.**, 912 F.2d 1238, 1241 (10th Cir. 1990), including drawing all reasonable inferences from the available underlying facts. **United States v. Diebold, Inc.**, 369 U.S. 654, 655 (1962) (per curiam). Summary judgment is appropriate only if there is no genuine issue of material fact for trial. **Matsushita Elec. Indus. Co. v. Zenith Radio Corp.**, 475 U.S. 574, 585-87 (1986).

The Fourth Amendment prohibits the police from arresting someone without either a warrant or probable cause. **Romero v. Fay**, 45 F.3d 1472, 1476 (10th Cir. 1995) (citing **Tennessee v. Garner**, 471 U.S. 1, 6-8 (1985).[1] "Probable cause

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[1]In their brief, the defendants argued Mr. Ramirez was arrested pursuant to a vlid warrant. However, during oral argument it became clear the Dallas, Texas

exists if facts and circumstances within the arresting officer's knowledge and of which he or she has reasonably trustworthy information are sufficient to lead a prudent person to believe that the arrestee has committed or is committing an offense." **Id.** (quoting **Jones v. City & County of Denver, Colo.**, 854 F.2d 1206, 1210 (10th Cir. 1988)). "Officers may rely on information furnished by other law enforcement officials to establish reasonable suspicion, and to develop probable cause for an arrest." **Albright**, 51 F.3d at 1536 (citations omitted).

The description of Pedro Ramirez contained in the NCIC printout and the description of Mr. Ramirez on the pawnshop form are strikingly similar. Both share surnames, hair color, eye color, weight, age, and most particularly identical dates of birth. The only differences are relatively insignificant. Under these circumstances, we have no difficulty concluding the police possessed probable cause to arrest Mr. Ramirez, and therefore did not violate his constitutional rights during the first episode.

In an attempt to avoid this conclusion, Mr. Ramirez challenges the reliability of the NCIC computer record on hearsay grounds. Obviously, because the contents of the computer record were not offered to establish the truth of the

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warrant was not produced before the district court. Therefore, the question becomes whether the information the police possessed from the NCIC computer supplied adequate probable cause for Mr. Ramirez' arrest.

statements it contained, the record is not inadmissible hearsay by definition. Fed. R. Evid. 801(c).

Mr. Ramirez also argues the police cannot rely on an NCIC printout to establish probable cause. Again, we disagree. We have not explicitly answered this precise inquiry, although in dicta in **United States v. Hines**, 564 F.2d 925 (10th Cir. 1977), cert. denied, 98 S. Ct. 748 (1978), we commented, "information received from the NCIC computer bank has been routinely accepted in establishing probable cause for a valid arrest." **Id.** at 927. However, other circuits who have addressed this issue have squarely held an NCIC computer printout is sufficient to establish probable cause for an arrest. See, e.g., **Duckett v. City of Cedar Park, Tex.**, 950 F.2d 1014, 1019-20 (7th Cir. 1989); **United States v. Towne**, 870 F.2d 880, 884-85 (2d Cir.), cert. denied, 490 U.S. 1101 (1989); **Capone v. Marinelli**, 868 F.2d 102, 105-06 (3d Cir. 1989). We conclude the NCIC information was sufficient to provide probable cause to arrest Mr. Ramirez. We hold the individual police officers were entitled to qualified immunity relating to Mr. Ramirez' first arrest.

In contrast, the factual predicate concerning the second arrest remains unclear, thus precluding summary judgment. The validity of the second arrest hinges on the extent of the knowledge of Lt. Harp and the officers of the first shift concerning the third shift's prior arrest and release of Mr. Ramirez. If the first shift knew of the third shift's prior activities, the similarities between Mr. Ramirez and the suspect are insufficient

to establish probable cause a second time without any additional information suggesting Mr. Ramirez and Pedro Ramirez were the same individual. However, if the first shift independently acted on the NCIC and pawnshop information without any knowledge of the third shift's activities, qualified immunity would be appropriate.

Unfortunately, the underdeveloped factual record does not enable us to determine whether Lt. Harp and the first shift knew of Mr. Ramirez' prior arrest. The majority of the summary judgment record on appeal consists of affidavits and police reports. A survey of the available evidence demonstrates how the extent of the first shift's knowledge of the third shift's activities remains an open question. Some of the affidavits and police reports submitted in support of summary judgment are contradictory, leaving the ultimate facts in doubt.[2]

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[2]For example, the police report, prepared by homicide officer Dale E. Coffman, regarding the second arrest by the first shift on the morning of August 26, 1991, states:

> We were under the impression at that time from information received from Lt. Harp that 3rd shift had been out there but could not confirm the warrant, <u>but it had since been confirmed through fingerprint analysis sent by Dallas Police Department that Robert[o] Ramirez was Pedro Ramirez.</u>

(emphasis added). By contrast, the affidavit prepared by the same officer and

Because reasonable inferences could be drawn from this evidence that would negate a finding of qualified immunity, we conclude the district court's judgment on this issue was premature.

The district court must reexamine this issue on remand; although, trial on the question may not be required. If there is available sufficient uncontroverted evidence to clear up what now appears to be conflicting statements of the participants, summary judgment may yet be appropriate.

Mr. Ramirez also argues a genuine issue of material fact exists concerning

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submitted in support of Defendants' Motion for Summary Judgment states in applicable part as follows:

> At the time when first shift officers arrived at the residence of Roberto Ramirez we believed that he matched the description of the individual wanted on the Dallas, Texas murder warrant and we took reasonable precautions in dealing with this situation. I believe that the only way to positively determine whether Mr. Ramirez was the wanted suspect was the fingerprint comparison which could not have been done until the lab personnel came on duty on 8:00 o'clock a.m.

(emphasis added). these two statements alone, made by the same individual, create a material issue of fact as to what the officers on the first shift knew at the time of the second arrest.

the scope of the WPD's search of his mobile home after the second arrest. The search of Mr. Ramirez' mobile home potentially may be justified based on either the incident to arrest or protective sweep exceptions to the warrant requirement. **United States v. Parra**, 2 F.3d 1058, 1066-67 (10th Cir.), cert. denied, 114 S. Ct. 639 (1993); **United States v. Hogan**, 38 F.3d 1148, 1149-50 (10th Cir. 1994), cert. denied, 115 S. Ct. 1323 (1995). However, the validity of the search under either exception depends on the acceptability of the underlying arrest. Because of our remand to the district court on this issue, a judgment of the propriety of the search must also await further action by the district court.

Next, the plaintiffs argue the district court erred in granting summary judgment for the defendants on their § 1985 claim.[3] The district court concluded the plaintiffs failed to state a claim. We agree.

We review the district court's determination the plaintiffs failed to state a claim under 42 U.S.C. § 1985 de novo. **Tilton v. Richardson**, 6 F.3d 683,

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[3]The second cause of action of the plaintiff's amended complaint alleged violations of 42 U.S.C. §§ 1983, 1985 and 1986. The plaintiff's third cause of action alleged violations of 42 U.S.C. §§ 1981, 1983, 1985, and 1986. On appeal, plaintiffs only raise the district court's disposition of their § 1985 claim. As a result, they have abandoned their claims under the other civil rights laws.

685 (10th Cir. 1993), cert. denied, 114 S. Ct. 925 (1994). The four elements of a claim under this statute are: (1) a conspiracy; (2) to deprive plaintiff of equal protection or equal privileges and immunities; (3) an act in furtherance of the conspiracy; and (4) an injury or deprivation resulting therefrom. **Murray v. City of Sapulpa**, 45 F.3d 1417, 1423 (10th Cir. 1995); **Griffin v. Breckenridge**, 403 U.S. 88, 102-03 (1971).

First, the plaintiffs have failed to establish the existence of a conspiracy. An allegation of a conspiracy must provide some factual basis to support the existence of the elements of a conspiracy: agreement and concerted action. **Crabtree By & Through Crabtree v. Muchmore**, 904 F.2d 1475, 1476 (10th Cir. 1990); **Sooner Prods. Co. v. McBride**, 708 F.2d 510, 512 (10th Cir. 1983). A plaintiff may establish a conspiracy by either direct or circumstantial evidence of a meeting of the minds or an agreement among the defendants. Such evidence is completely lacking here. Mr. Ramirez alleges the WPD intentionally harassed him by their twice arresting him based on his Hispanic ancestry. However, his bare allegations do not rise to the level of a conspiracy. Neither a conspiratorial agreement nor concerted action exists even if Mr. Ramirez can conclusively demonstrate the first shift officers knew about the third shift's prior arrest.

Second, Mr. Ramirez has failed to demonstrate any deprivation of his equal protection or equal privileges and immunities. A plaintiff must establish a class-based or racially discriminatory motive behind the conspiratorial

activities to establish this element. "Section 1985(3) does not 'apply to all tortious, conspiratorial interferences with the rights of others,' but rather, only to conspiracies motivated by 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus.'" **Tilton**, 6 F.3d at 686 (quoting **Griffin**, 403 U.S. at 101-02). Mr. Ramirez has failed to prove the actions of the police officers were based on his race.

Contrary to the assertion of plaintiffs' counsel, the fact Pedro Ramirez and Mr. Ramirez were Hispanic and their physical descriptions share common physical attributes of many Hispanic males does not equal racial discrimination. Mr. Ramirez has offered no evidence the officers intended to deprive him of his civil rights because of his Hispanic ancestry.

Third, Mr. Ramirez has failed to demonstrate the police conspiracy was aimed at interfering "with rights constitutionally protected against private, as well as official, encroachment." **United Bhd. of Carpenters & Joiners of Am. v. Scott**, 463 U.S. 825, 833 (1983). "[Section] 1985(3) applies to private conspiracies only in the event that the right aimed at by the conspiracy is one protected against both public and private interference." **Tilton**, 6 F.3d at 686 (citing **Bray v. Alexandria Women's Health Clinic**, 113 S. Ct. 753, 764 (1993)). Mr. Ramirez' allegations of Fourth Amendment violations do not fall within this category because the Fourth Amendment protects exclusively against governmental intrusions, not private conduct. We hold the plaintiffs have

failed to state a claim under 42 U.S.C. § 1985.

Additionally, Mr. Ramirez argues the district court erred in dismissing his claims against the City of Wichita. He contends he demonstrated deliberate indifference to his constitutional rights on the part of the City and the City's ordinance requiring pawnshops to provide information to the police is unconstitutional.

For the reasons stated by the district court, we agree with its conclusion Mr. Ramirez has failed to demonstrate any constitutional violation resulted from a policy or custom attributable to the City. We also conclude Mr. Ramirez lacks standing to challenge the City's pawnshop information disclosure policy.

In **United States v. Marchant**, 55 F.3d 509 (10th Cir.), cert. denied, 116 S. Ct. 260 (1995), we held no reasonable expectation of privacy existed in the information contained on the bureau of Alcohol, Tobacco, and Firearms (ATF) Form 4473 required for all firearms transactions. **Id.** at 517. We find no difference between the facts of this case and **Marchant.** The pawnshop form involved here contains virtually identical information as the ATF Form 4473 at issue there. Mr. Ramirez lacks Fourth Amendment standing to challenge the propriety of the City's ordinance.

Finally, plaintiffs challenge the district court's conclusion the other three Ramirez family members had no standing because viable § 1983 claims must

be based on the violation of one's own rights, not the rights of someone else. We agree.

"When we say standing, we mean that the § 1983 civil rights action is a personal suit. It does not accrue to a relative, even the father of the deceased." **Dohaish v. Tooley**, 670 F.2d 934, 936 (10th Cir.), cert. denied, 459 U.S. 826 (1982). **See also Archuleta v. McShan**, 897 F.2d 495, 497 (10th Cir. 1990). The district court properly concluded the Ramirez family has failed to demonstrate the officers intended to violate their individual rights by arresting Mr. Ramirez. Their allegations of fright, psychological and emotional injuries arising from Mr. Ramirez' arrest are insufficient to provide them standing because they have failed to allege any violations of their individual constitutional rights.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

Entered for the Court
John C. Porfilio
Circuit Judge

No. 95-3148
Ramirez v. City of Wichita

HOLLOWAY, Circuit Judge, concurring:

I concur fully in the court's opinion and write separately only to clarify my reasoning which, I believe, is not at odds with the court's. Plaintiffs rely heavily on Payton v. New York, 445 U.S. 573 (1980), in contending that Roberto Ramirez's rights were violated by these arrests. Payton, of course, holds that a warrantless arrest for a felony may not be made in the home, absent exigent circumstances, even when probable cause clearly exists. In their briefs, defendants have not disputed the fact that Payton is pertinent.

To rebut plaintiffs' reliance on Payton, defendants instead rely almost solely on the officers' reasonable belief that a warrant had issued in Texas, the continuing validity of which had been confirmed to the extent practical by telephone contact with the issuing authority. Defendants contend that granting qualified immunity to the officers under these circumstances is consistent with pronouncements of the Supreme Court in Whiteley v. Warden 401 U.S. 560, 568 (1971); and United States v. Hensley, 469 U.S. 221 (1985). In particular I write separately to make expressly clear my agreement with this contention in the analysis of the first arrest.

I will summarize my views very briefly. In Whiteley, the Court considered the validity of an arrest made by officers who had been informed by radio of the existence of a warrant from another

county. The Court held the arrest invalid, not because the officer making the arrest acted improperly, but because no probable cause had been shown for the issuance of the warrant. As to the arresting officer, the Court made this observation which is very pertinent here:

> We do not, of course, question that the Laramie police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause.

401 U.S. at 568.

The Court's holding that, in the resulting criminal prosecution, the validity of the arrest is dependent on the proper establishment of probable cause for the issuance of the warrant in no way diminishes the import of the quoted reasoning for this civil proceeding. The officers did not violate Ramirez's rights by effecting an arrest in the home, assuming *arguendo* that this was an arrest in the home, because they reasonably believed that a valid warrant existed.

In this regard, I also want to make clear my analysis that the defendants' failure to produce the Texas warrant in this civil case, *ante* at note 1, does not undermine the lawfulness of the officers' actions. Instead, the reasonableness of the officers' conduct is appropriately analyzed in the context of the information they possessed, which included the

reasonable belief in the existence of the warrant and the confirmation by telephone that the warrant was still outstanding. Thus, I read the court's opinion as fully consistent with the Whiteley dictum I have quoted.

Accordingly, with these explanations of my thinking, I agree with the majority's opinion and with the disposition it makes.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ROBERTO A. RAMIREZ,
STACIA RAMIREZ,
STEPHANIE RAMIREZ
and BOBBY RAMIREZ,
Plaintiffs-Appellants,

v.

No. 95-3148

THE CITY OF WICHITA;
OFFICER McCULLOCH,
Badge No. 1467;
OFFICER BARNES,
Badge No. 1443;
LIEUTENANT HAYNES,
Badge No. 913;
OFFICER BOB ANDERSON;
OFFICER DALE E. COFFMAN;
LIEUTENANT LEE B. HARP;
OFFICER WILLIAM A. RIDDLE;
OFFICER ERIC MALONE;
OFFICER RONALD S. TROLLOPE;
OFFICER TERRY D. MORROW;
and THE WICHITA POLICE
DEPARTMENT,
Defendants-Appellees.

ORDER
Entered April 22, 1996

Before **PORFILIO**, Circuit Judge; **HOLLOWAY**, Senior Circuit Judge; and **HOLMES**,* District Judge.

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*The Honorable Sven Erik Holmes, United States District Court for the Northern District of Oklahoma, sitting by designation.

This matter comes on for consideration of appellants' petition for rehearing and suggestion for rehearing in banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

In accordance with Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing in banc was transmitted to all of the judges of the court who are in regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing in banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing in banc is denied.

Entered for the Court

PATRICK FISHER, Clerk
By /s/
Deputy Clerk

APPENDIX D

528 PAWNBROKERS, SECONDHAND DEALERS, SCRAP PROCESSORS AND PRECIOUS-METAL DEALERS

528.01 City of Wichita Charter Ordinance 134 addresses regulation of all pawnbrokers, secondhand dealers and precious metal dealers, and Chapter 3.90 of the Code of the City of Wichita deals with scrap processors, all of whom are located within the corporate limits of the City.

528.02 When any of the subsequent sections of this Procedure apply uniformly to pawnbrokers, secondhand dealers, scrap processors, and precious-metal dealers, they will be collectively referred to as licensees.

WPD PROPERTY-RECOVERY SECTION

528.03 The Service Officer of the Crimes Against Property Division's Property-Recovery Section shall be responsible for:

A. enforcing all provisions of Charter Ordinance 134 and Chapter 3.90 of the City Code [except for those the enforcement of which the ordinances assign to agencies other than the WPD];

B. in accordance with Chapter 3.90, collecting and maintaining [for two years] information on property collected by licensees [e.g., time and place of transaction, personal information on pawner/seller, etc.];

C. assisting citizens and Departmental personnel in locating and recovering stolen property which has or may have ended up in such an establishment;

D. ensuring that the serial numbers of all items reposited in such businesses are checked through the SPIDER Section and reporting those that come back "stolen" to the appropriate section supervisor;

E. ensuring that information on wanted persons who pawn or sell property to licensees is forwarded to the appropriate section supervisor, or to other agencies.

REVISED 3-17-92